

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Hardy Telecommunications, Inc.)	
)	CC Docket 96-45
Petition for Waiver of the Sections)	DA 08-121
54.307(c)(2) and 54.802(a) Applicable to)	
the Line Count Submission For High Cost)	
Loop and Interstate Access Support)	
)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ submits these comments pursuant to the January 18, 2008 Public Notice by the Federal Communications Commission (the “Commission” or the “FCC”)² regarding Hardy Telecommunications’ (“Hardy” or the “Company”) petition³ for waiver of the end of September, 2007 line count filing deadline per Sections 54.307(c)(2) and 54.802(a).⁴ NTCA respectfully asserts that the Company

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 580 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite, and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Comment Sought on Petitions for Waiver of Filing Deadlines Related to the Universal Service Program*, CC Docket No. 96-45, DA 08-121 (rel. Jan. 18, 2008) (Public Notice).

³ *Hardy Telecommunications, Inc. Petition for Waiver of the Sections 54.307(c)(2) and 54.802(a) Applicable to the Line Count Submission for High Cost Loop and Interstate Access Support*, CC Docket No. 96-45 (filed Dec. 26, 2007) (Petition).

⁴ See 47 CFR § 54.307(c)(2) (“A competitive eligible telecommunications carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule. (2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year;”). Section 54.802(a) states, in part, as follows:

Each Eligible Telecommunications Carrier that is providing service within an area served by a price cap local exchange carrier shall submit to the Administrator, on a quarterly basis on the last business day of March, June, September, and December of each year line count data showing the number of lines it serves for the period ending three months prior to the reporting date, within each price cap local exchange carrier

has shown good cause for the Commission to grant Hardy’s waiver and urges the Commission to accept the Company’s September 4, 2007 line count submission as if filed by the end of September deadline. NTCA further supports the Company’s request to receive uninterrupted High Cost Loop support (“HCL”) for the first quarter of 2008 and Interstate Access Support (“IAS”) for the entire July 1, 2007 through June 30, 2008 period.

I. BACKGROUND.

Hardy is a Competitive Eligible Telecommunications Carrier (“CETC”) operating in rural portions of northwestern West Virginia surrounding the town of Moorefield, West Virginia. As of June 30, 2007, Hardy provides CETC-based wireline service to over 1,200 access lines in its rural service areas of Hardy County. Hardy has already made substantial investments in facilities to provide competitive wireline services, and has made specific investment plans for the year 2007-2008 based in part upon anticipated receipts of the federal Universal Service Fund (“USF”).⁵

Hardy was designated a CETC by the West Virginia Public Service Commission in 2004, and has made all necessary federal USF related filings on a timely basis. However, despite their good faith intentions to file line count information by the end of September, 2007 deadline, a mistake in typing an email address resulted in the Company not filing the required information until after the deadline. Hardy attempted to make its line count submission on September 4, 2007—more than three weeks prior to the deadline. However, in making the company’s submission, Hardy’s general manager inserted an extra period between the words “universal”

study area disaggregated by UNE Zone if UNE Zones have been established within that study area, showing residential/single-line business and multi-line business line counts separately...

47 C.F.R. §54.802(a).

⁵ Petition, pp. 2-3.

and “service”, thus sending the information to HCLfilings@hcli.universal.service.org rather than to HCLfilings@hcli.universalservice.org.⁶ Hardy was unaware of the mistake until it received its High Cost Remittance Statement from the Universal Service Administrative Corporation (“USAC”) in late November, 2007, and noted the lack of IAS recovery for the month of October.⁷ At that point, the Company contacted USAC and learned the details of their error. Hardy then immediately submitted the required information to USAC.⁸

II. HARDY HAS SHOWN GOOD CAUSE MERITING RELIEF, AND WAIVER OF THE LINE COUNT FILING DEADLINE IS IN THE PUBLIC INTEREST.

Hardy Telecommunications has demonstrated in its Petition that good cause exists to grant the waiver and that the waiver, in this situation, is in the public interest. Hardy has established a good record of submitting required USF information in a timely manner.⁹ There is no pattern of abuse, and no intent to defraud. It is readily apparent that the missed end of September deadline was the result of a simple typographical error.

Granting Hardy’s petition and allowing them to collect their HCL support for the 1st quarter of 2008 and IAS disbursements for the entire year period from July 1, 2007 through June 30, 2008 serves the public interest. As Hardy correctly noted, the Commission may waive any of its rules for good cause shown, such as where strict compliance to a filing deadline is inconsistent with the public interest.¹⁰ The Company had planned to use these funds for purposes of providing service and maintaining and upgrading its system. Denying the Company these funds will unfairly impact Hardy’s customers, which is not in the public interest.

⁶ *Id.*, p. 4.

⁷ *Ibid.*

⁸ Personal communication with Mary Mongold, General Manager, Hardy Telecommunications, Inc., February 15, 2008.

⁹ Petition, p. 3.

¹⁰ *Id.*, p. 5.

Further, Hardy's forecasted HCL and IAS disbursements have been included by USAC for sizing purposes, and thus would not threaten the funds disbursed or due to be disbursed to any other carriers. Clearly, no other party would be harmed by the Commission's granting Hardy's waiver petition.

Section 1.3 of the FCC's Rules allows the Commission to grant a waiver of the application of any of its rules for "good cause shown."¹¹ NTCA believes that Hardy has met the burden of showing good cause in this particular matter. Granting Hardy's waiver petition is in the best interests of the consumers served by the Company, and will not harm any other providers.

In addition to submitting their line count data as quickly as possible upon learning of their mistake, Hardy has taken immediate steps to insure that such an error will not occur in the future. Beginning in 2008, in lieu of the General Manager filing the line count reports, the Company's controller will do so and will report to the General Manager regarding the status and successful completion of the submissions in advance of the specific USF-related filing deadlines.¹² This will ensure that a mistake similar to that which occurred in this particular instance cannot occur ever again.

III. HARDY HAS LONG ACTED IN THE SPIRIT OF THE UNIVERSAL SERVICE PROGRAM, AND SHOULD NOT BE UNDULY PENALIZED AS THE RESULT OF A SINGLE, HONEST MISTAKE.

The ultimate goal of the universal service program is to provide rural consumers with the comparable quality of service available in non-rural areas, at reasonable prices. Typically, rural areas are much more expensive to serve due to lower population densities, geographic barriers,

¹¹ 47 C.F.R. § 1.3.

¹² Petition, p. 6.

and a general absence of the economies of scope and scale that benefit those providers serving non-rural areas. Often, it is only the receipt of universal service support makes it possible for a provider to serve their highest-cost customers. Without that support, many customers living in the most remote and highest-cost areas would go unserved.

Rightfully, the Commission has recently taken steps to try and reduce and eliminate any fraud and waste that may threaten the overall viability of the universal service program. Carriers need to realize that receiving universal service funding also compels them to comply with any information requests that USAC or the Commission might impose, fully and in a timely manner. Repeated or intentional flaunting of these requirements would certainly warrant the imposition of punitive actions.

It would be unfair and unjust to penalize Hardy, which has an otherwise unblemished record, for a single administrative error. Punitive action taken against such a carrier will have the unfortunate consequence of causing harm to that carrier's customers, and possibly limiting the quality and/or variety of telecommunications services which the customers may receive.

The Company has an established track record of acting in good faith to provide USAC with all requested information. The company undoubtedly understands the importance of filing required information in a timely manner. Upon the discovery of their error in this particular instance, they took swift and immediate action to not only correct the mistake that had been made, but also took steps to impose new processes and procedures that will insure that a similar occurrence cannot, and will not, happen in the future.

Hardy has a long and distinguished record of service to their community. This has been largely accomplished as the result of carefully planned and fully thought out financial investments made to the benefit of their customers. Compromising their financial position

through the withholding of universal service funds resulting from a simple administrative mistake will ultimately harm the Company's ability to provide high-quality, affordable service to their customers, contrary to the spirit and intent of the universal service program.

IV. CONCLUSION

For the above-noted reasons, NTCA respectfully requests that the Commission grant Hardy's waiver petition and allow the Company to receive the HCL support for the 1st quarter of 2008 and IAS disbursements for the entire year period from July 1, 2007 through June 30, 2008 to which it is entitled.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

Richard J. Schadelbauer
Economist
703-351-2019

By: /s/ Daniel Mitchell
Daniel Mitchell
(703) 351-2016

Its Attorney

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
703 351-2000

February 19, 2008

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing initial Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 08-121, was served on this 19th day of February 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554
Kevin.Martin@fcc.gov

Commissioner Deborah Taylor Tate
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, D.C. 20554
Deborah.Tate@fcc.gov

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554
Michael.Copps@fcc.gov

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554
Jonathan.Adelstein@fcc.gov

Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554
Robert.McDowell@fcc.gov

Best Copy and Printing, Inc.
445 12th Street, SW, Room CY-B402
Washington, D.C. 20554
fcc@bcpiweb.com

Jennifer Prime
Wireline Competition Bureau
445 12th Street, SW, Room 5-B550
Washington, D.C. 20554
Jennifer.Prime@fcc.gov

David Duarte
Wireline Competition Bureau
445 12th Street, SW, Room 5B-441
Washington, D.C. 20554
David.Duarte@fcc.gov

Thomas J. Moorman
Wood & Aitken LLP
2154 Wisconsin Ave., NW, Suite 200
Washington, D.C. 20007

Timothy E. Welch
Hill & Welch
1330 New Hampshire Ave., NW, Suite 113
Washington, D.C. 20036
welchlaw@earthlink.net

/s/ Adrienne L. Rolls
Adrienne L. Rolls